

REMARKS/ARGUMENT

Claims 1-5, 7, 8, 11 and 22-28 are pending in the application. All claims stand rejected. Reconsideration is requested in view of the above changes and the following remarks.

The January 6, 2005 Advisory Action declined entry of the claim amendments contained in applicants' Amendment Under 37 C.F.R. 1.116, filed Nov. 29, 2004 ("Nov. 29 claim amendments"). It is alleged in the Advisory Action that the Amendment Under 37 C.F.R. 1.116 failed to place the application in condition for allowance. However, on Dec. 30, 2004, applicants submitted (i) a petition and fee to extend the response period running from the final office action to January 3, 2005 and (ii) a request for continued examination (RCE). The RCE directed entry of the Nov. 29 claim amendments, and should have been sufficient to remove the finality of the July 1, 2004 office action. Applicants assume that the effect of the RCE in requiring entry of the November 29 claim amendments was not considered by Examiner because the RCE did not reach Examiner's desk prior to the mailing of the January 6 Advisory Action.

Applicants hereby renew and repeat the request contained in the RCE, to enter the Amendment Under 37 C.F.R. 1.116, and the claim amendments contained therein. The status of the claims as listed above assumes the entry of those amendments.

Claim 27 has been amended to delete reference to silver and copper species. The deletions are not relevant to patentability. Claim 27 has been further amended to conform to the identification of the first and second precipitants in claim 1 (as comprising polyvalent metal ions). The specification has been amended to delete subject matter which is not believed essential to the practice of the invention, and which relates to the use of silver or copper.

Claims 1-5, 7, 8, 11 and 25-27 are rejected under 35 U.S.C. 103(a) as allegedly being obvious over Bakis in view of Gilchrist (WO 96/17595). Claim 22 is rejected as allegedly obvious over the same combination, further in view of Kobayashi et al. (US 5,641,450). Claim 23 is rejected as allegedly obvious over Bakis in view of Gilchrist, further in view of Kehr et al. (US 4,201,846). Claims 24 and 28 are rejected as allegedly obvious over Bakis in view of Gilchrist, further in view of Clare et al. (US 4,693,728).

Examiner alleges in the Advisory Action that the rejections of record should be maintained because Bakis allegedly provides the motivation to practice the claimed process. Applicants respectfully disagree, and continue to maintain that the selection of a second precipitant which comprises a polyvalent metal ion would not have been obvious in view of Bakis.

In the second paragraph of Bakis Example 1, a cross-linked foam is treated with sodium citrate to induce gelation of the foam. Treatment of the Bakis foam with sodium citrate operates in a completely different way than treatment with a polyvalent metal ion containing precipitant as in the present invention. As indicated previously, Bakis' treatment of a cross-linked foam in Example 1 with sodium citrate caused foam gelation, not stabilization, as in the present invention. By contrast, treating the foam with a polyvalent metal ion according to the present invention would have created an increased degree of cross-linking, and the foamed structure would have become more stable, i.e., less soluble.

Examiner relies upon the disclosure of Bakis at col. 4. lines 25-65 as disclosing different effects of mono- and di- or trivalent metal cations on polysaccharide foam. Examiner indicates that Bakis teaches in lines 34-40 treatment of a foam having dispersed therein an insoluble carbonate or hydrogen carbonate salt having one or more di- or trivalent cations. Examiner notes that the insoluble carbonate or hydrogen carbonate-impregnated foam is next treated with strong acid to liberate CO₂ and the di- or trivalent cations. According to Bakis, the liberated cations cross-link with the polysaccharide to form a dimensionally stable foam. From this disclosure, it is alleged by Examiner that "one of ordinary skill in the art would have known to crosslink the polysaccharide foam with di- or trivalent metal cations to make a dimensionally stable foam structure". The Examiner further notes the disclosure of Bakis at col. 4, lines 49-65 to the effect that a cross-linked foam may be further treated with monovalent cations to impart a degree of solubility to the foam. The Examiner concludes from this disclosure that "controlling the solubility of the foam by *further* treating with mono-, di- or trivalent cations that affect solubility of the foam would have been obvious to the routineer".

Examiner seems to suggest that Bakis' teaching that monovalent cations can be used to uncross-link a stabilized foam to convert it to a more soluble form can somehow be equated with a second precipitation step with di- or trivalent cations. This is clearly incorrect. The teaching of Bakis at col. 4, lines 49-65 is not to provide further stabilization of the foam, but to increase the solubility of the previously stabilized foam. This is diametrically opposed to the aim of the present invention which is to achieve sufficient stabilization so as to allow sterilization. It is not apparent from Bakis that there would have been any benefit to further treating a stabilized foam with di- or trivalent cations.

The Examiner's conclusion that "controlling the solubility of the foam by *further* treating with mono-, *di- or trivalent* cations that affect solubility of the foam would have been obvious to the routineer" is without any basis in Bakis. To the extent that Bakis teaches a "*further*" treatment of an already stabilized foam, it is solely with monovalent cation, to *destabilize* the foam, thereby increasing solubility.

There is simply no teaching or suggestion in Bakis for treatment of a foam with a first precipitant comprising a polyvalent metal cation followed by curing, and treatment of the cured foam with polyvalent metal cation again. At best, Bakis teaches that a once-cross-linked foam may be, if desired, un-crosslinked to some extent by treatment with a monovalent cation, to provide a more soluble product. There is nothing in the disclosure of Bakis which would teach or suggest treating with a polyvalent metal cation twice, as in the present invention.

The invention of claim 1 is not obvious over the asserted combination of references. Claim 1 is believed allowable. All other claims in the application depend directly or indirectly from claim 1. In view of the allowability of claim 1, all other claims are similarly allowable.

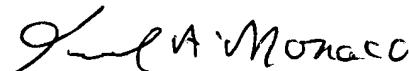
Applicant believes that the Application as currently amended is in condition for allowance. An early action toward that end is earnestly solicited.

Appln. No.: 09/763,983

Reply to Advisory Action dated January 6, 2005

Respectfully submitted,

THOMAS GILCHRIST, ET AL.

By: 

DANIEL A. MONACO

Registration No. 30,480

Drinker Biddle & Reath, LLP

One Logan Square

18th and Cherry Streets

Philadelphia, PA 19103-6996

(215) 988-3312

(215) 988-2757 - Fax

Attorney for the Applicants